IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 7220 of 2004

Between:

1 Managing Committee, Jame Masjid Mohammedia Ek Minar rep., by its President Mohd.Sultan, s/o Shaik Imam, aged 67 years, Occ:Business, r/o H.No.11-3-357/2, Shahbazguda, Mahmoodguda, Secunderabad.
2 Mohd.Sultan, s/o Shaik Imam, Occ: business, R/o H.No.11-3-357/2, Shahbazguda, Mahmoodguda, Secunderabad.

..... PETITIONERS

AND

1 The A.P.State Wakf Board, through its Chief Executive Officer, Office at Haj House, Opp:Public Garden, Nampally, Hyderabad.
2 The Station House Officer, Police Station Chilakalaguda, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any appropriate writ order or direction declaring the inaction of the respondent No.1 in issuing notice and conducting enquiry U/s.36 of Wakf Act as per direction of this Hon'ble Court in order dt.12-9-2003 in WP No.19098/2003 illegal, arbitrary and violation of constitution and principles of natural justice and consequently the respondent no.1 may be directed to issue notice to the petitioners and to conduct enquiry U/s.36 of Wakf Act in the matter of registration of Madersa and mosque Mohammedia Ek Minar at Shahbazguda Mahmoodguda Secunderabad as per the direction in order dt.12-9-2003 in WP No.19098/2003

For the Petitioner:MR.MOHD. GHULAM HUSSAIN, Advocate

For the Respondent No.1: MR.A.M.QURESHI (SC FOR AP WAKF BOARD)
For the Respondent No.2: The Government Pleader for Home

The Court at the admission stage made the following ORDER :

This writ petition is filed by the petitioners aggrieved by the action of the first respondent in not conducting any enquiry as directed by this Court in W.P. No.19098 of 2003, dated 12.09.2003.

2. According to the petitioners, Jame Masjid Mohammedia Ek Minar was constructed in the year 1972 with the funds and efforts of the locality people and well wishers, which is in an area of 805 Sq. yds and the same is in double storied and having all the facilities for the persons offering prayer in the said mosque. There was no organized management for the said mosque though it was developed with the aid of various persons. On 09.03.2003 elections were held and the Managing Committee was constituted for the said mosque and the petitioner was elected as President of the said mosque, and he took charge from the former President Mohd. Liaqat Ali and the said Managing Committee has been looking after the affairs of the mosque. According to the petitioner, he made an application to the first respondent-Wakf Board not only to register the mosque property as a Wakf property but also claiming that the petitioner shall be appointed as Mutawalli. Similarly, one Syed Ahmed, former Secretary also made an application for registering the mosque property as Wakf property.

3. The first respondent – Wakf Board after considering the rival claims, finally passed orders for registering the property as Wakf's. But, however, the claim of the petitioner for being appointed as Mutawalli was rejected by an order, dated 02.07.2003. The registration of the Wakf was affected and the same was also published in the Gazette. The petitioner, aggrieved by the said order dated 02.07.2003, rejecting his claim for being appointed as Mutawalli, filed W.P.No.19098 of 2003. This Court, while disposing of the writ petition on 12.09.2003, quashed the impugned order dated 02.07.2003 to the extent of the petitioner's claim for his appointment as Mutawalli and directed the first respondent

– Wakf Board to conduct an enquiry as contemplated under Section 36 (7) of the Wakf Act, after taking into consideration the respective claims made by the first petitioner as well as second respondent. According to the petitioner, in pursuance of the said order, the first respondent did not conduct any enquiry. Therefore, the petitioner has come up with the present writ petition, when a new Managing Committee was appointed.

4. The learned counsel for the petitioner contended that the said action of the first respondent is illegal and contrary to the orders of this Court.

5. The learned Standing Counsel for the first respondent, however, opposed the said contentions and contended that as the property was already registered as a Wakf property, the first respondent alone is entitled to appoint the person for managing the said Wakf and it is not for the petitioner to claim any Mutawalli.

6. Heard both sides and considered the material on record.

7. As this Court has already passed an order on 12.09.2003, disposing of W.P.No.19098 of 2003 filed by the petitioner under which the first respondent was directed to conduct necessary enquiry with reference to the petitioners claim, while setting aside the orders of the first respondent dated 02.07.2003, it is obligatory on the part of the first respondent to conduct necessary enquiry for adjudicating the claim of the petitioner for being appointed as Mutawalli and decide the said issue.

7. In view of the above, if the issue as directed by this Court on 12-09-2003 has not been decided by the first respondent, the first respondent is directed to decide the same in pursuance of the directions given by this Court expeditiously, after issuing notice to the petitioners as well as to the second respondent, preferably within a period of three months from today.

8. The writ petition is accordingly disposed of at the admission stage.

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29.06.2004
Note: Furnish CC by tomorrow
B/o
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To
1 The Chief Executive Officer, A.P.State Wakf Board,
Office at Haj House, Opp:Public Garden, Nampally,
Hyderabad.
2 The Station House Officer, Police Station Chilakalaguda,
Secunderabad.
3 Two CCs to the Government Pleader for Home, High Court of
A.P, Hyderabad (OUT)
4 Two CD Copies